IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12084 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIR KADARBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR RAMNANDAN SINGH for Petitioner

NR UR BHATT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City on 27th July, 2000 in exercise of powers conferred upon

him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained on 27th July, 2000 in pursuance of the above said order.

2. The detaining Authority took into consideration the crime registered against the petitioner before the Amaraiwadi Police Station on 25th July, 2000 under Sections 3, 4, 6, 7 and 8 of the Cruelty to Animals Act. The detaining authority has also considered the investigation made in the above said crime registered against the petitioner. The detaining authority took into consideration the statements of two witnesses who offered their statements against the petitioner on assurance of anonymity of identity. From the above materials, the detaining authority came to the conclusion that the petitioner was indulging in illegal activity of committing cruelty towards the animals. It was further observed by the detaining authority that the petitioner was a headstrong person and hardened criminal and nobody came forward to file any complaint against him. Hence the detention order.

3. Learned Advocate Mr. Ramnanand Singh for the petitioner and learned AGP Mr.Udai Bhatt for the respondents were heard.

4. Amongst other grounds it was vehemently urged that the order of detention is vitiated due to non-application of mind by the detaining authority in considering the less drastic remedy available to the detaining authority. It was urged that the remedy under Sec. 437(5) of the Cr.P.C. for cancellation of bail was available to the detaining authority but the detaining authority failed to consider properly the provisions for the cancellation of bail. It was urged that therefore, the order of detention is required to be quashed and set aside.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995(2) GLR 1134 and again in LPA No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September, 1999, by Bench decision, this court ruled that the powers under Section 437(5) of the Cr.P.C. are far more wide in import and intent. The Court further observed that non-resorting to the said less drastic remedy available would amount to non-application of mind by the detaining authority qua relevant aspects of the case. In this matter also the detaining authority in the grounds has mentioned that the petitioner was released on

bail and since the illegal activity of the petitioner was required to be prevented forthwith and that the procedure for cancellation of bail was likely to consume more time, there was no alternative except to pass the order under the PASA Act. Thus, it clearly appears that the detaining authority has failed to consider properly the import and intent of the provisions for the cancellation of bail. Not only that, but instead of resorting to the less drastic remedy available, the same has been brushed aside by merely saying that the procedure for cancellation of bail was likely to consume more time. This clearly reveals the non-application of mind on the part of the detaining authority qua relevant aspect of the case and, therefore, the order of detention passed by the detaining authority is required to be quashed and set aside on this ground alone.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 27th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Nasir Kadarbhai Sheikh is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair